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Attorneys for Defendant  
California Department of Corrections  
and Rehabilitation

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROSARIO MARINELLO,

Plaintiff

vs

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION,

Defendant.

Case No. CV08-0664 JW

**NOTICE OF DEFENDANT  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION'S MOTION TO  
DISMISS THE COMPLAINT  
[Fed.R.Civ.Proc Rule 12(b)(6)]**

Date: Jun 23, 2008

Time: 9:00 a.m.

Ctrm: 8

Judge: Hon. James Ware

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on June 23, 2008 at 9:00 a.m. or as soon thereafter as counsel may be heard in Courtroom 8 of the above-entitled court, located at 280 South 1<sup>st</sup> Street, San Jose, CA 95113, Defendant California Department of Corrections and Rehabilitation ("CDCR") will move for an order to dismiss the complaint under Federal Rules of Civil Procedure, Rule 12 (b)(6).

1 This motion is necessitated by plaintiff's failure to timely file this lawsuit within 90 days  
 2 after receipt of a "right-to-sue" notice issued by the Equal Employment Opportunity  
 3 Commission ("EEOC"), as admitted in the complaint. Moreover, plaintiff's factual allegations  
 4 fail to sufficiently state a cause of action under Title VII of the Civil Rights Act of 1964.

5 The motion is based upon this Notice of Motion, the Memorandum of Points and  
 6 Authorities filed herewith, the pleadings, records and files in this action, and on such further  
 7 material and argument as may be submitted at or before the hearing on this motion.  
 8

9 WHEREFORE, Defendant prays as follow:

- 10 (1) That the Complaint and each claim for relief alleged therein be dismissed as against  
 11 Defendant State of California Department of Corrections and Rehabilitation without  
 12 leave to amend;  
 13  
 14 (2) That Plaintiff be ordered to take nothing from moving Defendant;  
 15  
 16 (3) That judgment be entered in favor of the moving Defendant; and  
 17  
 18 (4) For such other relief as the court deems just.

17 Dated: May 1, 2008

Respectfully submitted,

18 EDMUND G. BROWN JR.  
 19 Attorney General of the State of California  
 20 MIGUEL A. NERI  
 21 Supervising Deputy Attorney General  
 22 FIEL D. TIGNO  
 23 Supervising Deputy Attorney General

24 /s/  
 25 DAVID PAI  
 26 Deputy Attorney General

27 Attorneys for Defendant  
 28 California Department of Corrections and  
 Rehabilitation

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: ***Rosario Marinello v. California Department of Corrections and Rehabilitation***

U. S. District Court, Northern District, Case No.: 5:08-CV-00664-JW

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is P.O. Box 70550, Oakland, CA 94612-0550.

On May 1, 2008, I served the attached:

1. NOTICE OF DEFENDANT CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION'S MOTION TO DISMISS THE COMPLAINT  
[Fed.R.Civ.Proc. Rule 12(b)(6)

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Oakland, California, addressed as follows:

Rosario Marinello  
In Pro Per  
266 Reservation Road, #F-232  
Marina, CA 93933

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 1, 2008, at Oakland, California.

ELVIA GRANADOS  
Declarant

/S/  
Signature